

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

STARLET KIZER

MOVANT

V.

NO. 3:10cr163-SA

UNITED STATES OF AMERICA

RESPONDENT

**ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS**

This matter comes before the Court, *sua sponte*, for consideration of the transfer of this cause. Movant, Starlet Kizer, has filed a pleading titled “Motion in Support of 28 U.S.C. § 2255(e),” in which she claims an entitlement to § 2255 relief based upon the holding of *Johnson v. United States*, 135 S. Ct. 2251 (2015), which struck down the residual clause of the Armed Career Criminal Act as unconstitutionally vague. Doc. #233. Kizer has already filed one unsuccessful § 2255 motion concerning the same judgment which she now seeks to challenge. *See* Doc. # 197 (final judgment denying § 2255 motion).

The Antiterrorism and Effective Death Penalty Act requires that an applicant seeking to file a second or successive motion first be certified by a panel of the appropriate court of appeals. *See* 28 U.S.C. § 2255(h); *see also* 28 U.S.C. § 2244(b)(3)(A). Kizer has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED**:

- 1) That this petition shall be transferred to the Fifth Circuit Court of Appeals for Richardson to seek permission to file this successive § 2255 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(C), and *In re Epps*, 127 F.3d at 365; and

3) That this case is **CLOSED**.

SO ORDERED this the 7th day of June, 2016.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE